

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Equal Employment Opportunity Commission,)	C/A No.: 3:07-1769-JFA-JRM
)	
Plaintiff,)	
vs.)	O R D E R
)	
Siemens Maintenance Services, LLC,)	
)	
Defendant.)	
)	

The plaintiff filed this action alleging that the defendant violated the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621, *et seq.*, when it failed to hire Kenneth Dewalt based on his age. The defendant filed a motion to dismiss to which the plaintiff responded.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this court should deny defendant's motion to dismiss. The Magistrate Judge recommends that because the jurisdictional facts are intertwined with the facts of the case, that defendant's Rule 12(b)(1) motion to dismiss should be denied. The Magistrate Judge also concludes that the plaintiff has articulated

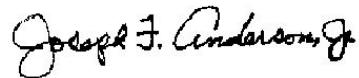
¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

enough facts to state a claim for relief so that it has established a *prima facie* case of age discrimination under the ADEA. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

After the Magistrate Judge's Report was filed, and prior to the expiration of time for the parties to lodge objections to the Report, the parties filed a stipulation that the defendant would withdraw its motion to dismiss.

In light of the Magistrate Judge's recommendation and the parties' stipulation, this court directs that the clerk docket the motion to dismiss as withdrawn. The clerk shall also docket the Report and Recommendation as moot, and shall return such case to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

March 3, 2008
Columbia, South Carolina